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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 39-1995
April 24, 1995

****** This Order has been subject to Judicial Review ******

INQUIRY RE: A Request for Access to Complaint Records held by the City of Langley

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1. Description of the review

As Information and Privacy Commissioner, I conducted an oral inquiry at the Office of the Information and Privacy Commissioner in Victoria, British Columbia on March 31, 1995 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request by Esko Veli Holopanien (the applicant) for a review of a decision by the City of Langley (Langley) to deny him access to the names and addresses of eighteen people who signed a petition submitted to Langley City Council on May 30, 1994. The applicant requested the names on December 13, 1994. The City denied his request under sections 19 and 22 of the Act.

On January 3, 1995, the applicant made a request to the Information and Privacy Commissioner for a review of the decision to withhold the names and addresses of the petitioners.

On March 20, 1995, the City of Langley advised the applicant and the Office of the Information and Privacy Commissioner (the Office) that the information was also being withheld under section 15 of the Act.

Mr. Colin Fortes, a Legal Information Counselor with the Langley Legal Assistance Centre, appeared for the applicant. Rodrick H. McKenzie and Donald J. Sutherland, Barristers and Solicitors with the firm of Thompson & McConnell, appeared for the City of Langley. Mr. Frank Douglas Thomas, the supervisor of by-law enforcement for the City, also appeared.

2. Documentation of the inquiry process

Under sections 56(3) and (4) of the Act, the Office gave notice of the inquiry to the applicant and the City of Langley and invited them to make submissions.

Under section 54(b) of the Act, the eighteen people who signed the petition were also given notice and also invited to provide written representations. These submissions were forwarded and received on an *in camera* basis, both directly from the third parties and from the City of Langley.

The Office of the Information and Privacy Commissioner provided the applicant and the public body with a three-page Portfolio Officer's fact report which, after minor clarifications, the parties accepted as accurate for the purpose of conducting the inquiry.

Under section 57(1) of the Act, the burden of proof is on the public body to demonstrate that the applicant did not have a right of access to the names and addresses under sections 15 and 19 of the Act.

Under section 57(2) of the Act, the burden of proof is on the applicant to demonstrate that disclosure of the names and addresses would not be an unreasonable invasion of the privacy of the third parties under section 22.

The applicant was given an opportunity to make a submission after the conclusion of the inquiry concerning the City's argument under section 15(2)(b) of the Act, and he did so on April 7, 1995. The City then prepared its own response to this submission. I have carefully considered these and other submissions and affidavits received in connection with this inquiry.

3. Issues under review at the inquiry

The issues under review at the inquiry are the applicability of sections 15(1)(a), 15(1)(c), 15(1)(d), 15(2)(b), 19(1)(a), 19(1)(b), 22(2)(e), 22(2)(f), and 22(3)(b) of the Act to the records in dispute. These sections read in part as follows:

Disclosure harmful to law enforcement

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm a law enforcement matter,

....

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

(d) reveal the identity of a confidential source of law enforcement information,

....

(2) The head of a public body may refuse to disclose information to an applicant if the information

....

(b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or

....

Disclosure harmful to individual or public safety

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

(b) interfere with public safety.

....

Disclosure harmful to personal privacy [of third parties]

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

....

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

....

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

....

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

....

4. The records in dispute

The record in dispute is one page containing the names and addresses of eighteen people who signed and submitted a petition to Langley City Council on May 30, 1994 concerning Jane Doe of 54th Avenue in Langley.

5. The facts of the case

The applicant in the case is a resident of Langley, who described himself as a friend of Jane Doe (who was also present with the applicant at the oral inquiry). Neighbours of Jane Doe petitioned the City of Langley, because they knew that she was applying for a temporary permit from the City. She was requesting a temporary permit to live in a trailer on her property, after her home had burned down. Eighteen nearby residents opposed the granting of a permit and listed a number of concerns about the condition of her property. A representative of the petitioners and Jane Doe addressed the Council meeting on May 30, 1994. She was provided with a copy of the one-page complaint but not the appended list of signatories. At a second Council meeting on June 27, 1994, Jane Doe received a three-month extension. Subsequently, there was litigation on the matter in the Supreme Court of British Columbia.

6. The applicant's case

The applicant argued that disclosure of the names of the eighteen petitioners would not be an unreasonable invasion of their privacy, since they gave up their right to privacy when they signed the petition: "The very act of signing a petition is to take a public stand on a certain issue and lend one's support to that cause.... Petitions generally are not intended to be kept secret." (Outline of Argument on Behalf of Applicant, pp. 2-4) In support of this position, the applicant cited various decisions of the Ontario Information and Privacy Commissioner and a section of the *Freedom of Information and Protection of Privacy Act* Policy and Procedures Manual, prepared by the Information and Privacy Branch of the Ministry of Government Services.

The applicant further rejected any claims that disclosure of the record in dispute would expose the signatories unfairly to financial or other harm under section 22 of the Act and that, furthermore, there is no evidence that the personal information was supplied in confidence. In addition, the City Council tabled the petition at a regular open Council meeting, as opposed to a special one as permitted by section 220 of the *Municipal Act*. (Outline of Argument on Behalf of Applicant, pp. 4-7)

The applicant further rejects any implication that Langley was conducting an ongoing investigation into a possible violation of law by Jane Doe, or that disclosure of the identities would harm an investigative technique or procedure, since the method of petition is obviously well known in the community. (Outline of Argument on Behalf of Applicant, pp. 7-9)

With respect to section 19 of the Act, the applicant and Jane Doe deny that disclosure of the names of the petitioners will threaten their safety or mental or physical health. Nor is there any known threat to public safety in a community of 22,000. (Outline of Argument on Behalf of Applicant, pp. 9-11)

7. The City of Langley's case

One of Langley's key arguments is that it was engaged in by-law enforcement in connection with Jane Doe's property and that the informants whose identities are being sought provided the City with needed information that it had requested. Both parties made presentations to City Council on May 30, 1994. Jane Doe appeared again on June 27, 1994, at which time the City granted her a grace period under certain conditions. The Supreme Court of British Columbia confirmed her violation of the zoning bylaw on February 7, 1995 and ordered her to remove herself and her trailer from her property. (City's Argument, p. 1) According to an affidavit from the mayor of Langley, this action was required because she refused to relocate at the end of her three-month grace period; the City had to bring an action in Supreme Court to enforce the zoning bylaw. (Exhibit 1, paragraph 11)

The City's policy is to require identification of informants before written complaints of violations are acted upon, but it does not release these identities without consent. Because of the informants' expressed concerns for their personal safety, the mayor and city administrator permitted this complaint to be in writing. (City's Argument, pp. 1-2)

The City's "primary consideration is the fact that this information was provided by informants respecting a law enforcement matter on the City's assurance of confidentiality." The City was involved in what is now "a fully completed law enforcement procedure." (City's Argument, p. 4 and oral argument) The City added that "the sole basis for the City's involvement in this matter is law enforcement. All steps taken by the City with respect to the issues raised by the informants were related to law enforcement matters only." (City's Argument, p. 6) Thus the City argues that disclosure in this case would harm law enforcement under section 15 of the Act: "This law enforcement matter commenced as the reporting of offences and evolved into an issue of enforcement," including a mandatory injunction from the Supreme Court. (City's Argument, p. 10)

The City is of the opinion that the information in dispute is personal information, that its disclosure would be an unreasonable invasion of the personal privacy of the informants under section 22 of the Act, and that the applicant has failed to meet his burden of proof under section 57(2). (City's Argument, pp. 5-6)

The City argued under section 22(2)(f) that the information in dispute was supplied in confidence. An affidavit from the mayor of Langley states that a representative of the informant group made verbal representations to her in advance of the

May 30, 1994 meeting. She explained that if a letter were submitted, "all names and addresses attached to the letter would remain confidential." Only the "substantive contents" of the letter would be released to Jane Doe. (Exhibit 1, paragraphs 5 and 6)

The administrator of Langley, that is its senior bureaucrat, explained its policy on requiring identification of all informants to the City. The purpose is to minimize "the occurrence of vexatious, frivolous or fabricated allegations. The City's experience has been that the occurrence of such improper allegations is reduced if informant identity is required." (Exhibit 14, paragraph 2) However, informants are also promised confidentiality for their identities:

> Information confidentiality has three purposes. First, it is intended to provide neighbors with a method of ensuring that the law is enforced with minimal disruption to community or neighborly relations. Second, it is intended to protect informants' health and safety where neighborly relations have or may deteriorate to a hostile state. Finally, due to the chilling effects that the required provision of informant identity has on informants, by eliminating the fear of reprisal, confidentiality has the intended purpose of encouraging legitimate complaints to be brought forward. (Exhibit 14, paragraph 5)

Because of the limited resources available for bylaw enforcement, the City relies heavily on information provided by informants "for the effective investigation and enforcement of the City's Bylaws." It also will not enforce a bylaw without a victim (an "aggrieved party") who has suffered harm. However, if the evidence of an informant is required for a prosecution, the City will not proceed if consent cannot be obtained. (Exhibit 14, paragraphs 6-8)

With respect to section 19 of the Act, the City Administrator heard from two signatories before the May 30, 1994 meeting to the effect that all of the signatories "were afraid of reprisals they might suffer at the hands of Jane Doe if their identities were revealed." He gave them oral assurances that all names and addresses attached to an informing letter would remain confidential: "It has been the City's practice to maintain confidentiality regarding these or other matters where safety or practical concerns are raised regarding the disclosure of individuals' identities." (Exhibit 14, paragraphs 9-10)

Under section 19(1)(a) and (b) of the Act, the City argues that the risk of harm to anyone's safety or mental or physical health from disclosure of the contested information only needs to be reasonable and that it has met this standard by means of the videotape of Jane Doe at the Council meeting on June 27, 1994 and the *in camera* affidavits submitted by signatories. (City's Argument, pp. 9-10; Exhibit 19)

8. Discussion

Section 15: Law Enforcement

I accept the various arguments of Langley to the effect that bylaw enforcement is generally a "law enforcement matter" under section 15(1)(a) of the Act, and that it indeed did become law enforcement in the present case because of the necessity to petition for a Supreme Court injunction under sections 750 and 751 of the *Municipal Act*.

In my recent decision, Order No. 36-1995, March 31, 1995, concerning events on Saturna Island, I established the following test:

> In order to characterize information as resulting from a law enforcement action, a public body must establish it had a law enforcement mandate. I find support for this proposition in Ministry of Attorney General, Ontario Information and Privacy Commissioner, Order P-416, February 23, 1993, p.5 (Tom Mitchinson, Assistant Commissioner). The definition of law enforcement in British Columbia requires, in my view, that a public body have specific statutory authority to conduct the investigation and to impose sanctions or penalties.

I am satisfied that the City of Langley has such responsibilities under the *Municipal Act*.

I accept that disclosure of the record in dispute in this case "could reasonably be expected to (a) harm a law enforcement matter," in the sense that municipalities with by-law enforcement procedures similar to those of Langley would have difficulty collecting information relevant to by-law enforcement, if they could not promise anonymity to complainants, as Langley did in the present case.

However, I do not accept that revealing the identities at issue in this inquiry would "harm the effectiveness of investigative techniques and procedures currently used," as defined by section 15(1)(c) of the Act. (See City's Argument, pp. 10-13) The "technique" that the City is referring to is eighteen members of the community collectively voicing their concerns to the Mayor and Council. The substance of those concerns were discussed in an open council meeting. Public bodies cannot use this exception to withhold records under section 15(1)(c) for commonly-known investigative techniques. I intend to interpret section 15(1)(c) narrowly in this review.

The City argues that residents will not come forward with by-law complaints if confidentiality cannot be promised in order to ensure their personal safety; this would be harmful to the quality of community life. In the present case, the petition to the Supreme Court went forward on the basis of evidence collected by the bylaw enforcement officer, and there was no need to reveal the identities of the informants. (Oral argument)

Finally, I do accept that in this case disclosure of the identities of the neighbours would be contrary to the intent of section 15(1)(d) of the Act. According to the City, Mayor Grinnell solicited this petition for "consideration by Council" and assured confidentiality to the group. I am satisfied that this makes the group "a confidential source of law enforcement information." The petition was to assist Council in making its decision with respect to Jane Doe's application for a temporary permit. The City advised Jane Doe that failure to adhere to the bylaws would result in "legal action being taken against her." The issue under consideration on May 30, 1994 was whether to enforce the bylaws immediately or after any grace period granted. (Affidavit of Marlene Grinnell) Jane Doe was subsequently granted a three-month grace period.

Section 22: Harm to Personal Privacy

I agree that the names and addresses provided by the complainants are personal information under section 22 of the Act. I also accept that the personal information was supplied in confidence under section 22(2)(f).

The bylaw enforcement guidelines of Langley, effective August 30, 1982, do require that enforcement action with regard to its bylaws should only be entertained where there exists a clearly identified complainant. (Exhibit 14, Exhibit A; City's Argument, p. 13) But the written policy does not stipulate the circumstances under which the identities of complainants will be kept confidential. It is my view that the policies of municipalities that follow the practices of Langley should now be in written form in order to comply with section 22(2)(f) of the *Freedom of Information and Protection of Privacy Act.*

Section 19: Harm to an Individual or Public Safety

The notice to third parties in this inquiry invited them to submit *in camera* affidavits to me with a copy to the City of Langley. The latter submitted 8 affidavits to me, which I accepted on an *in camera* basis in accordance with my customary procedures (Exhibits 3 to 10). Three of these affidavits only reached me via the City, although in 2 cases this statement only covers the affidavit, since I had received the substantive letter directly. (Exhibits 6, 9, and 10) I received submissions directly from 8 third parties in the inquiry, including 3 that I did not receive from the City. The copies of letters conveyed by the City included sworn affidavits from the signatories of these letters. Each referred to their expectations of confidentiality for both their initial submission to Langley Council and their present communication to this inquiry and their negative experience with Jane Doe.

The affidavits uniformly refer to the direct or observed experiences of verbal abuse and threats from Jane Doe, past, present, and future. The affidavits also refer to the writer's fears of verbal abuse, threats, and physical harm that might happen to them, their families, or residents of their homes, if their identities are revealed to Jane Doe. (Exhibits 3 to 10) In addition, there are allegations of vandalism having occurred.

I have reviewed each of the submissions and affidavits received from third parties and conclude, without hesitation, that the writers have presented detailed and convincing evidence which demonstrates that they have sufficient reason from their past experiences with Jane Doe to have legitimate reasons to fear for their safety or mental or physical health, if their identities are disclosed to the applicant in this case. The testimony does not paint an attractive picture of life as one of Jane Doe's neighbours and contradicts her own testimony at this inquiry that she would not "harm" her neighbours and has not "threatened" them in the past.

Counsel for the applicant himself argued that there is no evidence that he would cause harm to the signatories of the complaint to City Council. However, I conclude that disclosure of identities to any applicant for them, never mind a friend of Jane Doe, would have the undesirable result of subjecting the informants to the risk of harm to their safety.

It is my judgment that the public body has thus met the standard of proof required under section 19(1) of the Act. This is in accordance with the standards that I have established in my previous decisions. See Order No. 7-1994, April 11, 1994, pp. 4-6. As I said in Order No. 28-1994, November 8, 1994, page 8: "I intend to act prudently with respect to possible violence and hostile behaviour following disclosures of information under the Act ... [Therefore,] the standard of proof [of a threat of harm] is a balance of probabilities. Further, I do not require that the proof of violence be actual as opposed to potential."

I agree that the head of the public body may refuse to disclose the record in dispute to the applicant under section 19(1) of the Act.

9. Order

Under section 58(2)(b) of the Act, I find that the City of Langley was authorized to refuse to disclose the information in dispute. Therefore, I confirm the decision of the public body not to disclose the record in dispute to the applicant.

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David H. Flaherty
Commissioner

April 24, 1995